

## **ADMINISTRATIVE PANEL DECISION**

Telefonaktiebolaget LM Ericsson v. José Luis Brito sosa, Ericsson  
Case No. D2023-2111

### **1. The Parties**

The Complainant is Telefonaktiebolaget LM Ericsson, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is José Luis Brito sosa, Ericsson, Mexico.

### **2. The Domain Name and Registrar**

The disputed domain name <ericsson.com> is registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2023. On May 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 26, 2023.

The Center sent an email communication, both in English and Spanish, to the Parties on July 5, 2023, stating that although the Complaint was filed in English the Registrar confirmed the language of the registration agreement was Spanish. The Complainant filed a request for the language of the proceeding to be English on July 6, 2023. The Respondent did not comment.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 1, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on August 2, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant, Telefonaktiebolaget LM Ericsson, was founded in 1876 and is a global leading provider of communication technology and services around the world.

The Complainant owns several trademark registrations for ERICSSON in many jurisdictions, including the following:

- Mexican Trademark Registration No. 221119 ERICSSON, registered on January 11, 1979, in classes 7, 8, 9, 11, 12, 16, 17 and 21;
- Canadian Trademark Registration No. 25436 ERICSSON, registered on September 25, 1946, in class 9;
- United States of America Trademark Registration No. 2665187 ERICSSON, registered on December 24, 2002, in classes 9, 11, 35, 36, 37, 38, 41 and 42;
- Australian Trademark Registration No. 322638 ERICSSON, registered on October 3, 1978, in class 9;
- European Union Trademark Registration No. 004822219 ERICSSON, registered on December 7, 2006, in classes 41 and 42;
- International Trademark Registration No. 918102, registered on November 12, 2006, in classes 9, 11, 16, 35, 36, 37, 38, 41 and 42.

Also, the Complainant owns the domain name <ericsson.com> registered since 1989, which resolves to the primary webpage with which it communicates to its customers.

The disputed domain name <ericssonnn.company> was registered on April 27, 2022, and resolves to a webpage which reads "This site can't be reached".

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant, in essence, claims that the disputed domain name is confusingly similar with the trademark ERICSSON in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Complainant employs over 99.000 employees worldwide and in the third quarter of 2022 achieved net sales of SEK 57.5 billion with an operating income of SEK 8.6 billion.

The Complainant has not authorized or licensed the use of the trademark ERICSSON to the Respondent or to register a domain name containing it.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### **A. Procedural Issue: Language of the proceeding**

Paragraph 11(a) of the Rules provides that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances.

The Complainant submitted its Complaint and amended Complaint in English. According to the information received from the Registrar, the language of the registration agreement for the disputed domain name is Spanish. The Complainant requested that the language of the proceeding should be English.

The Panel accepts the Complainants submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Spanish and English of the language of the proceeding as well as notified the Respondent in Spanish and English of the Complaint and amended Complaint. The Respondent chose not to comment on the language of the proceeding nor did the Respondent choose to file a Response.

Therefore, having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

### **B. Identical or Confusingly Similar**

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's ERICSSON trademark.

The disputed domain name incorporates the Complainant's trademark ERICSSON in its entirety with the addition of a final letter "n", which does not prevent a finding of confusing similarity. See section 1.9 of the [WIPO Overview 3.0](#).

The generic Top-Level Domain ("gTLD") ".company", is viewed as a standard registration requirement and is

generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark ERICSSON in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

### C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Respondent has not provided any evidence that would indicate that it has been commonly known by the disputed domain name or by the name "Ericsson", enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 7.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry." Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

#### **D. Registered and Used in Bad Faith**

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark ERICSSON mentioned in section 4 above (Factual Background) when it registered the disputed domain name on April 27, 2022. By that time, the Complainant had many years before registered and intensely used the trademark ERICSSON and the domain name <ericsson.com> (including in Mexico, where the Respondent is based).

See *Telefonaktiebolaget LM Ericsson v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2022-4035](#) "Given the extensive use of the ERICSSON trademarks for communication technology products/services by the Complainant, which occurs in numerous countries, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity".

By registering the disputed domain name that includes the Complainant's trademark ERICSSON in its entirety the Respondent was targeting the Complainant and its business. The addition of the word "company" only contributes to confuse Internet users and leads them to think that the relevant website belongs to or is endorsed by the Complainant with the intention to capitalize on the fame of the Complainant's trademark for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name which is a clear typosquatting of the widely-known mark ERICSSON and the use of a privacy shield to hide the registrants identity are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

Finally, the fact that the disputed domain name does not currently resolve to an active webpage, in the circumstances of the case does not prevent a finding of bad faith under the "passive holding" doctrine (as stated in section 3.3 of the [WIPO Overview 3.0](#)).

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

#### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <ericssoncompany> be transferred to the Complainant.

/Miguel B. O'Farrell/

**Miguel B. O'Farrell**

Sole Panelist

Date: August 9, 2023